



PUBLIC NOTICE

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DA 16-393
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APPLICATIONS FILED FOR THE TRANSFER OF CONTROL OF XO COMMUNICATIONS, LLC TO VERIZON COMMUNICATIONS INC.

PLEADING CYCLE ESTABLISHED

WC Docket No. 16-70

Comments/Petitions Due: May 12, 2016

Reply Comments/Oppositions to Petitions Due: May 27, 2016

XO Holdings and Verizon Communications Inc. (Verizon) (together, Applicants) filed a series of applications, pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (Act), and sections 63.04, 63.18, and 63.24 of the Commission's rules,¹ seeking approval to transfer control of various licenses and authorizations² held by XO Communications, LLC (XO Communications) from XO Holdings to Verizon. Pursuant to this transaction, if approved, XO Holdings would sell all of its interests in XO Communications to Verizon, and XO Communications, along with its operating subsidiaries, would become a wholly owned, indirect subsidiary of Verizon.³

In addition, Nextlink Wireless, LLC (Nextlink Wireless), a subsidiary of XO Holdings, agreed to lease to Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless), and XO Holdings also agreed to provide Verizon Wireless an option to acquire control of, certain wireless local multipoint distribution service (LMDS) and 39 GHz licenses held by Nextlink Wireless.⁴ By a separate Public Notice, the

¹ 47 U.S.C. §§ 214, 310(d); 47 CFR §§ 63.04, 63.18, 63.24. Consolidated Applications to Transfer Control of Domestic and International Section 214 Authorizations, WC Docket No. 16-70 (filed Oct. 30, 2015) (Lead Application). Applicants filed a supplement to their application on March 22, 2016. Letter from Bryan N. Tramont, Counsel to Verizon Communications Inc., and Thomas W. Cohen, Counsel to XO Holdings, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-70 (filed Mar. 22, 2016) (March 22 Supplement).

² Applicants submit that, in addition to its domestic and international section 214 authorizations, XO Communications holds 53 Common Carrier Fixed Point-to-Point Microwave licenses and one Millimeter Wave 70/80/90 GHz Service license.

³ Lead Application, Exh. 1, Description of the Parties, Description of the Transaction, Public Interest Statement, and Administrative Matters, at 4 (Public Interest Statement).

⁴ Applicants state that Nextlink Wireless is not being transferred with XO Communications and will continue to operate as an independent provider of wireless-based services to commercial and wholesale customers. March 22 Supplement at 4. XO Holdings and Verizon Wireless also are parties to an Equity Purchase Agreement pursuant to which XO Holdings has granted an option to Verizon Wireless, which is not being exercised at this time, to purchase all of the issued and outstanding limited liability company interests in Nextlink Wireless. See Application of Nextlink Wireless, LLC and Verizon Wireless for Long-term *de facto* Transfer Lease, File No. 0007162285, Exh. 1, Description of Transaction and Public Interest Statement, at 1 n.1 (filed Mar. 2, 2016), <http://wireless2.fcc.gov/UlsApp/ApplicationSearch/applAdmin.jsp?applID=9506788#>.

Wireless Telecommunications Bureau seeks comment on the proposed long-term *de facto* transfer lease between Nextlink Wireless and Verizon Wireless.⁵

XO Communications, a Delaware limited liability company, is a wholly owned subsidiary of XO Holdings, a Delaware general partnership.⁶ XO Holdings, through various intermediate holdings companies, is wholly owned and controlled by Carl C. Icahn.⁷ Applicants state that XO Communications, through its operating subsidiaries, provides communication services in all 50 states and the District of Columbia. Applicants further state that XO Communications controls and operates an IP and Ethernet network that includes an inter-city network of approximately 20,000 fiber route miles and more than 5,600 owned metro fiber route miles.⁸ Applicants explain that XO Communications provides local and long distance voice, Internet access, cloud connectivity, security, private line, Ethernet, and other private data and network transport services for small and medium-sized companies, enterprises, national and government customers, and other carriers, both on a managed and wholesale basis.⁹

Verizon, a publicly-traded Delaware corporation, is a holding company whose operating subsidiaries provide communications services to consumers, businesses, government customers, and other carriers throughout the United States and internationally.¹⁰ Verizon's wireline business provides voice, data, and video communications products and enhanced services, including broadband video and data, corporate networking solutions, data center and cloud services, security and managed network services, and local and long distance voice services.¹¹ Verizon's Enterprise Solutions division serves businesses and enterprise customers nationwide and internationally.¹² Verizon subsidiaries also include incumbent local exchange carrier (LEC) entities in eight states in the Northeast Corridor and the District of Columbia.¹³ Verizon's wireless division, Verizon Wireless, provides nationwide voice and data across a wireless network comprised of 4G LTE and 3G EVDO networks.¹⁴

Applicants assert that grant of the transfer of control applications will serve the public interest, convenience, and necessity.¹⁵ They state that the proposed transaction will "enhance the ability of commercial customers and wireless consumers across the country to receive the highest quality and reliable communications services."¹⁶ According to Applicants, by gaining access to the fiber-based IP and Ethernet networks of XO Communications, Verizon will enhance its reach and improve its services,

⁵ *Cellco Partnership d/b/a Verizon Wireless and Nextlink Wireless, LLC Seek FCC Consent to a Long-Term de facto Transfer Spectrum Leasing Arrangement Involving Local Multipoint Distribution Service and 39 GHz Spectrum*, ULS File No. 0007162285, Public Notice, DA 16-394 (WTB Apr. 12, 2016).

⁶ Public Interest Statement at 2-3.

⁷ *Id.* at 3.

⁸ *Id.* at 3.

⁹ *Id.* at 2-3. XO Communications does not offer or provide mass market retail services to consumers.

¹⁰ *Id.* at 2. According to the Applicants, Verizon is a publicly-traded and widely-held company, and no person or entity holds a direct or indirect ten percent or greater ownership interest in Verizon.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 5-6.

¹⁶ *Id.* at 6.

especially in areas outside of Verizon's incumbent LEC footprint.¹⁷ The Applicants claim that enterprise and wholesale customers will benefit from Verizon's growing fiber-based IP and Ethernet networks, as Verizon improves its ability to serve multi-location enterprise customers and its ability to compete against national and regional high-capacity providers.¹⁸ In addition, Applicants claim that wireless consumers will benefit from enhanced capacity, reliability, and new technologies as Verizon deploys its new fiber assets in support of 5G technologies and the further densification of its nationwide cellular network.¹⁹ Applicants state the transaction will benefit current XO Communications customers by giving them access to the full range of Verizon's offerings, which, they claim, are more extensive than the offerings of XO Communications.²⁰ Applicants assert that Verizon will continue to provide service and comply with XO Communications' "contractual and regulatory obligations to its customers, so that the transaction will be seamless to those customers."²¹ Finally, Applicants assert that the transaction will create in excess of \$1.5 billion in operational and economic efficiencies (on a net present value basis) by eliminating certain access costs paid to third parties and by consolidating various network monitoring and support systems, business functions, and finance and accounting processes.²²

Applicants claim that the transaction will not cause any material adverse harm to consumers or competition. Applicants state that XO Communications' domestic fiber network is largely located outside of the areas where Verizon has deployed fiber, with nearly 85 percent of XO Communications' owned fiber network located outside of Verizon's incumbent LEC footprint.²³ According to Applicants, this relative lack of fiber overlap results in no potential for material competitive harm in the market for high-capacity services.²⁴ Applicants also claim that even in the small number of markets²⁵ in Verizon's

¹⁷ *Id.* at 7 (claiming that in XO Communications' top 20 fiber areas, the transaction will expand Verizon's owned fiber by more than 5,000 miles, of which nearly 85 percent are in areas outside of Verizon's incumbent LEC footprint, and that in the twenty densest counties XO Communications serves that are outside of Verizon's incumbent LEC footprint, the transaction will expand Verizon's on-net building inventory by over 2,500 buildings). Applicants state that the top 20 fiber areas to which they refer are based on legacy XO Communications "operating areas," which do not necessarily relate to standard geographical areas (e.g., MSAs, counties). March 22 Supplement at 3. Applicants state that the 20 densest counties to which they refer are those counties located outside of Verizon's incumbent LEC footprint in which XO Communications has the most on-net buildings. *Id.*

¹⁸ Public Interest Statement at 7-8.

¹⁹ *Id.* at 6; *see also id.* at 10 ("[A]s Verizon deploys substantial numbers of new macro sites and small cells to ensure ample capacity and further coverage nationwide, XO Communications' fiber assets offer significant capacity to quickly support that deployment. The majority of XO Communications' fiber in each of its top 20 fiber areas is unlit, or 'dark,' with those areas having 79 percent unlit fiber on average, including up to 96 percent unlit in Dallas. This transaction affords Verizon the opportunity to put that unlit fiber to use by supporting further densification of its cell network.").

²⁰ *Id.* at 7.

²¹ *Id.* at 12.

²² *Id.* at 11-12.

²³ *Id.* at 13; *see also* March 22 Supplement at 2 (asserting that as a result of the proposed transaction, Verizon will gain access to a total of 4,487 on-net buildings served by XO Communications; according to Applicants, only 691 (15%) of these on-net buildings are within Verizon's incumbent LEC footprint, and Applicants claim that at least 537 of those buildings (78%) are served by at least one other competitive LEC or cable company, and an additional 136 buildings are within 0.1 miles of the fiber plant of a cable provider or leading competitive LEC. Of the 3,796 on-net buildings served by XO Communications that are not within Verizon's incumbent LEC footprint, Verizon currently does not have plant in 3,303 (85%) of those buildings; of the 493 buildings where Verizon does have plant, 440 (89%) are served by a cable company or another competitive LEC, while an additional 41 buildings are within 0.1 miles of another competitive LEC's fiber plant.).

²⁴ Public Interest Statement at 13.

incumbent LEC footprint where XO Communications has fiber facilities, there is a sufficient supply of high-capacity facilities from other major providers that will ameliorate material competitive harm from the transaction.²⁶ Applicants also state that neither Verizon nor XO Communications is deemed dominant on any U.S.-international route, so there are no competitive issues arising from this addition to Verizon's U.S.-international operations.²⁷

Finally, Applicants state that the transaction will not result in the violation of any provisions of the Act or the Commission's rules, nor will it frustrate or otherwise interfere with the objectives of the Act or other statutes.²⁸

SECTION 214 AUTHORIZATIONS

A. International

The application for consent to the transfer of control of the international section 214 authorization from XO Holdings to Verizon has been assigned the file number listed below.

| File Number | Authorization Holder | Authorization Number |
|------------------------|------------------------|--------------------------------------|
| ITC-T/C-20160304-00114 | XO Communications, LLC | ITC-214-20001117-00674 ²⁹ |

B. Domestic³⁰

Applicants filed an application to transfer control of domestic section 214 authority in connection with the proposed transaction.³¹

(Continued from previous page)

²⁵ March 22 Supplement at 1 (“These markets refer to the 15 metropolitan statistical areas (‘MSAs’) located within Verizon’s remaining ILEC footprint where XO Communications has on-net buildings.”).

²⁶ Public Interest Statement at 13; *see also id.* at 14 (stating that “a wide range of providers and new entrants have deployed facilities and are investing further to meet demand and thus competition should continue to intensify” and that “[c]urrent and potential competitors that offer a wide array of high-capacity services include cable companies, [competitive] LECs, wireless companies, and other non-traditional players”); March 22 Supplement at 3 (“These other providers include Level 3, Zayo, and Cogent, as well as cable companies such as Comcast and Cablevision (Lightpath), all of which provide competing services in these markets.”).

²⁷ Public Interest Statement at 14.

²⁸ *Id.* at 5-6.

²⁹ The following wholly owned subsidiaries of XO Communications provide international service under its international section 214 authorization pursuant to section 63.21(h) of the Commission’s rules, 47 CFR § 63.21(h): XO Communications Services, LLC; XO Virginia, LLC; Telecommunications of Nevada, LLC; XO NS, Inc.; and, XO International, LLC. Public Interest Statement at 3 n.6.

³⁰ Applicants state that the following operating subsidiaries of XO Communications offer domestic telecommunications services under the blanket domestic section 214 authorization held by XO Communications: XO Communications Services, LLC, a Delaware limited liability company; XO Virginia, LLC, a Washington limited liability company; and Telecommunications of Nevada, LLC, a Delaware limited liability company. Public Interest Statement at 3 nn.6-7.

³¹ Applicants did not request streamlined treatment for the domestic section 214 application under section 63.03 of the Commission’s rules, 47 CFR § 63.03.

SECTION 310(d) APPLICATIONS

The applications for consent to the transfer of control of certain ancillary wireless licenses under section 310(d) have been assigned the file numbers listed below.

A. Consolidated Application for Transfer of Control of Wireless Authorizations

| Lead Application File Number | Licensee | Lead Call Sign |
|------------------------------|------------------------|----------------|
| FCC File No. 0007166982 | XO Communications, LLC | WQHF652 |

Application of Verizon Section 310(b)(4) Foreign Ownership Declaratory Ruling

Applicants state that Verizon's existing section 310(b)(4) foreign ownership declaratory ruling covers the common carrier wireless licenses that XO Holdings will transfer to Verizon.³² Further, Applicants certify that Verizon is in compliance with the terms and conditions of its foreign ownership ruling and the Commission's rules.³³

Request for Approval of Additional Authorizations and Exemption from Cut-Off Rules

Applicants have requested that the Commission's grant of consent to the transfer of control of the licenses and other authorizations held by XO Communications also include the authority for Verizon to acquire control of (1) any licenses and other authorizations issued to XO Communications or any of its subsidiaries or affiliates during the Commission's consideration of the applications and the period required for the consummation of the proposed transaction following approval; (2) any construction permits held by XO Communications that mature into licenses after closing, and (3) applications filed by XO Communications or its subsidiaries or affiliates that are pending at the time of consummation of the proposed transaction.³⁴ The Applicants also request a blanket exemption from any applicable cut-off rules in cases where Verizon files amendments to pending applications to reflect consummation of the proposed transfer of control.³⁵ This exemption is requested so that amendments to pending Verizon applications to report the change in ultimate ownership of these licenses would not be treated as major amendments.³⁶

GENERAL INFORMATION

The applications referenced herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies.

Pursuant to section 1.419 of the Commission's rules, 47 CFR § 1.419, interested parties may file comments and petitions **on or before May 12, 2016**, and reply comments or oppositions to petitions **on or before May 27, 2016**. Comments may be filed using the Commission's Electronic Comment Filing

³² See *Petition for Declaratory Ruling Granted, Verizon Communications Inc. on Behalf of its Subsidiaries Holding FCC Common Carrier Radio Licenses Seeks Foreign Ownership Ruling Pursuant to Section 310(b)(4) of the Communications Act, as Amended*, Public Notice, 28 FCC Rcd 16432 (IB 2013).

³³ Public Interest Statement at 16.

³⁴ *Id.* at 16-17.

³⁵ *Id.* at 17-18.

³⁶ *Id.* at 18.

System (ECFS) or by paper. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS at <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. All envelopes and boxes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 1-888-835-5322 (tty).

In addition, please provide one copy of each pleading to each of the following:

- 1) Neil Dellar, Office of General Counsel, transactionteam@fcc.gov;
- 2) Dennis Johnson, Wireline Competition Bureau, dennis.johnson@fcc.gov;
- 3) Michael Ray, Wireline Competition Bureau, michael.ray@fcc.gov;
- 4) David Krech, International Bureau, david.krech@fcc.gov;
- 5) Sumita Mukhoty, International Bureau, sumita.mukhoty@fcc.gov;
- 6) Linda Ray, Wireless Telecommunications Bureau, linda.ray@fcc.gov;
- 7) Kathy Harris, Wireless Telecommunications Bureau, kathy.harris@fcc.gov.

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.³⁷ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, then the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings

³⁷ 47 CFR § 1.1200 *et seq.*

(specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 CFR § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

To allow the Commission to consider fully all substantive issues regarding the Applications in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.³⁸ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Dennis Johnson, Wireline Competition Bureau, (202) 418-0809; Michael Ray, Wireline Competition Bureau, (202) 418-0357; David Krech, International Bureau, (202) 418-7443; Sumita Mukhoty, International Bureau, (202) 418-7165; Linda Ray, Wireless Telecommunications Bureau, (202) 418-0257; or Kathy Harris, Wireless Telecommunications Bureau (202) 418-0609.

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³⁸ See 47 CFR § 1.45(c).